

Complaint

IN THE MATTER OF

ACADEMY KNITTED FABRICS CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 6028. Complaint, Aug. 11, 1952—Decision, Dec. 27, 1952

Where a corporation engaged in the manufacture and interstate sale and distribution of certain fabrics made of highly inflammable brushed rayon which resembled in texture and appearance fabrics made of wool, acetate and other fibers not readily inflammable, and were used by the purchasers for sweaters and other articles of wearing apparel for the consuming public; and its three officers—

Sold and distributed said fabrics without disclosing either on their invoices or bills to purchasers or by attached labels or tags that they were highly inflammable, and thereby impliedly warranted that they were suitable for use in the manufacture of wearing apparel and that such apparel was safe to wear, when in fact they were dangerous and unsafe for use;

With tendency and capacity to mislead a substantial number of manufacturers of wearing apparel and members of the consuming public as to the safety of the fabrics and wearing apparel made therefrom, and thereby cause them to purchase substantial quantities of such fabrics or apparel; and with effect of placing in the hands of uninformed or unscrupulous manufacturers a means and instrumentality whereby members of the purchasing public might be deceived:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Solomon & Rosenbaum, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Academy Knitted Fabrics Corporation, a corporation, and Jacob M. Wallerstein, Harry Leventhal and Murray Feiner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

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PARAGRAPH 1. Academy Knitted Fabrics Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 318 West 39th Street, New York, New York. The individual respondents, Jacob M. Wallerstein, Harry Leventhal and Murray Feiner are respectively president, vice-president and secretary-treasurer of the corporate respondent and as such officers, formulate, direct and control the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter mentioned. These individual respondents have their offices at the same place as the corporate respondent.

PAR. 2. Respondent, Academy Knitted Fabrics Corporation, is now, and for several years last past has been, engaged in the manufacture, sale and distribution of fabrics composed of various fibers, including rayon. Respondents cause the fabrics made by the corporate respondent, including those composed of rayon, when sold, to be transported from the place of business of Academy Knitted Fabrics Corporation in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said fabrics in commerce among and between the various States of the United States.

PAR. 3. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance. Some fabrics and articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of wool. Many members of the purchasing public are unable to distinguish between articles of wearing apparel manufactured from such rayon fabrics and, articles of wearing apparel manufactured from wool. Consequently, articles of wearing apparel manufactured from such rayon fabrics are readily accepted by many members of the purchasing public as wool products.

PAR. 4. Some of the rayon fabrics, manufactured, sold, and distributed by the respondents are a particular type of brushed rayon that is highly inflammable. Such fabrics simulate wool in texture and appearance and respondents do not inform the purchasers of said fabrics that said fabrics are highly flammable.

Purchasers of respondents' said fabrics make up sweaters and other articles of wearing apparel from them for sale to members of the purchasing public. Such products resemble wool products and are readily accepted by many members of the public as wool products.

PAR. 5. Garments and other products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Wool is not readily inflam-

mable and is a desirable material for garments, including sweaters and other outer wear.

PAR. 6. By failing to reveal the inflammable characteristics of the said fabrics, respondents have represented and impliedly warranted that said fabrics are suitable to be manufactured into sweaters and other garments that are safe to wear. In truth and in fact, sweaters and other garments made from respondents' said fabrics are dangerous and unsafe to be worn as articles of clothing because of their inflammability.

Respondents' said practices place in the hands of retailers and others a means and instrumentality whereby members of the purchasing public may be mislead and deceived in the manner aforesaid.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated December 27, 1952, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 11, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After respondents had filed their answer to the complaint, a hearing was held before the above-named hearing examiner at which a stipulation of facts was entered into between counsel supporting the complaint and counsel for respondents and incorporated into the record of the proceeding. The stipulation provided that, subject to the approval of the hearing examiner, the facts set forth therein might be taken as the facts in the proceeding and in lieu of evidence in support of and in opposition to the complaint, and that the hearing examiner might proceed upon such statement of facts to make his initial decision stating his findings as to the facts, including inferences which he might draw from the stipulated facts, and his conclusion

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based thereon, and enter his order disposing of the proceeding without the filing of proposed findings or conclusions or the presentation of oral argument. The stipulation further provided that upon appeal to or review by the Commission the stipulation might be set aside by the Commission and the case remanded to the hearing examiner for further proceedings under the complaint. Thereafter the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, answer and stipulation, the stipulation having been approved by the hearing examiner, who, after duly considering the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Academy Knitted Fabrics Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 318 West 39th Street, New York, New York. Respondents Jacob M. Wallerstein, Harry Leventhal and Murray Feiner are president, vice-president and secretary-treasurer, respectively, of respondent corporation and as such officers formulate, direct and control the acts, policies and practices of the corporation, including the acts and practices hereinafter set forth.

PAR. 2. The corporate respondent is now, and for several years last past has been, engaged in the manufacture, sale and distribution of fabrics composed of various fibers, including rayon. Respondents cause these fabrics, when sold, to be transported from the place of business of the corporation in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such fabrics in commerce among and between the various States of the United States.

PAR. 3. Some of the rayon fabrics manufactured and sold by respondents were made of a particular type of brushed rayon which is highly inflammable. These fabrics resembled in texture and appearance fabrics made of wool, acetate and other fibers which are not readily inflammable. Respondents failed to disclose, either on their invoices or bills to purchasers or by means of labels or tags attached to their fabrics, the fact that the fabrics were highly inflammable, although it appears that respondents did supply such information orally by telephone to at least some of their customers. The fabrics were used by the purchasers principally for making sweaters and

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other articles of wearing apparel which eventually reached the consuming public.

PAR. 4. The sale and distribution by respondents of the fabrics in question without disclosure, or without adequate disclosure, of the fact that the fabrics were highly inflammable, constituted an implied warranty that they were suitable for use in the manufacture of wearing apparel, and that such apparel was safe to wear. Actually such fabrics and apparel, because of their high inflammability, were dangerous and unsafe for use.

PAR. 5. The acts and practices of respondents, as set forth above, had the tendency and capacity to mislead and deceive a substantial number of manufacturers of wearing apparel and members of the consuming public with respect to the safety of respondents' fabrics and of wearing apparel made therefrom, and the tendency and capacity to cause such manufacturers and members of the public to purchase substantial quantities of such fabrics or of wearing apparel made therefrom. Respondents' acts and practices served also to place in the hands of uninformed or unscrupulous manufacturers a means and instrumentality whereby members of the public might be misled and deceived.

PAR. 6. The acts and practices in question have already been discontinued by respondents.

CONCLUSION

The acts and practices of respondents as hereinabove set out are all to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Academy Knitted Fabrics Corporation, a corporation, and its officers, and Jacob M. Wallerstein, Harry Leventhal and Murray Feiner, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of fabrics, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale or selling fabrics which are highly inflammable, without clearly disclosing thereon or by means of labels or tags attached thereto that such fabrics are highly inflammable.

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ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of December 27, 1952].

Syllabus

IN THE MATTER OF
PHILIP MORRIS & COMPANY, LTD., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4794. Complaint, Aug. 5, 1942—Decision, Dec. 29, 1952

In seeking to determine through tests and analyses involving clinical studies the relative irritating effects of smoke from diethylene glycol and glycerine-treated cigarettes, the vagaries of subjective observation and the defects inherent in objective observation are equally well known, and to apply the results of the observations reported in a number of cases which is less than trivial compared to the tremendous number of cigarette smokers in the country is wholly unwarranted.

As respects the relative irritation produced by the smoking of cigarettes which have been submitted to different treatment or which may represent the brands of different manufacturers, the throats of people vary in their susceptibility to irritation.

In appraising the validity of various tests on animals and on human beings, made in varying ways and under varying conditions by respondent and used by it as a basis for sustaining categorically its unqualified representations concerning its product to the public for many years, the Commission was of the opinion as respects the substantiality and probative value of certain other tests made in the premises that it was not held to higher standards of substantiality or probative value in dealing with such respondent than the latter had observed in dealing with the public, and that inasmuch as the respondent had invoked a certain type of test as a medium for proving the truth, the Commission might invoke such a test to prove falsity.

The smoke of all cigarettes is an irritant and the extent of such irritating effects depends upon numerous factors including the tolerance of the individual smoker, the frequency of smoking, the extent to which the smoke is inhaled, the rapidity with which the cigarette is smoked, and the length to which it is smoked.

Where one of the largest manufacturers of tobacco products in the United States, engaged in the competitive interstate sale and distribution of its Philip Morris cigarettes, in the manufacture of which, begun in 1932 or 1933, it employed as a hygroscopic agent or moistener diethylene glycol instead of glycerine, the principal hygroscopic agent used generally by cigarette manufacturers; in advertising its said products in magazines of nationwide circulation, in newspapers of interstate circulation and through radio broadcasts in nationwide hookups and otherwise—

(a) Falsely represented that its said cigarettes did not irritate the upper respiratory tract and were less irritating thereto than other brands, including the four leading competitive brands; and that the irritation produced by other cigarettes was of longer duration than that produced by its said cigarette;